

EFFECTIVE
JANUARY 8, 1986

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

FILED

JANUARY 23, 1986

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of the Suspension)
or Revocation of the License of)

FRANCIS V. NATALE, D.C.)

To Practice Chiropractic in)
the State of New Jersey)

Administrative Action

ORDER DENYING APPLICATION FOR STAY
PENDING APPEAL

This matter was opened to the New Jersey State Board of Medical Examiners on the application of Francis V. Natale, D.C. for a stay of the Order of this Board signed by Edward W. Luka, President, on October 25, 1985, which by its terms imposed a one year suspension, sixty (60) days of which were to be served as an active suspension, effective January 1, 1986. On December 9, 1985, respondent, through his counsel, Robert P. Glickman, Esq., forwarded to the Board, a Notice of Motion seeking a stay of the imposition of the fine and punishment set forth in the October 29 Order. On December 23, 1985, counsel for respondent was advised that his notice was received too late for the Board to consider it at its December 11 meeting. He also was advised to supplement his Notice of Motion "with a brief or a letter detailing the reasons why respondent is seeking such relief." That responsive submission dated January 3, 1986 was received by Deputy Attorney General Sharon M. Joyce on January 6, 1986, two days before the Board meeting. Deputy Attorney General Joyce submitted a response to Mr. Glickman's submission. Both letters were disseminated to the Board at its January 8, 1986 meeting. The matter was thereafter considered on the papers, without oral argument.

By his January 3, 1986 letter, respondent argues that a stay pending appeal should be granted to preserve the subject matter of the

appeal and to prevent irreparable injury. The issues which respondent would seem to be raising on appeal include: 1) whether the Board erred in finding basis for disciplinary sanction in respondent's "intensive as well as extended course of chiropractic treatment" in the absence of symptomology and 2) whether the Board's decision should be disturbed because respondent's prior counsel failed to call an expert witness on his behalf.

The State contends that under relevant case law, an application for stay should be evaluated in light of the following factors: 1) likelihood of success on the merits 2) irreparable injury to the applicant 3) harm to the other party and 4) the public interest. Deputy Attorney General Joyce contends that respondent has failed to make a showing of any likelihood of success on the merits. She counters respondent's argument that the scope of chiropractic rule, N.J.A.C. 13:35-7.1, authorizes the treatment of chiropractic patients in the absence of symptomology, contending that the rule makes it clear that chiropractic treatment is only warranted where there is a subjective complaint or an objective finding. Similarly, she asserts that respondent's prior counsel's failure to call an expert witness is an insufficient basis for a stay of this action. Citing language from Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 931, 925 (D.C. Cir. 1958), the State argues that the mere financial detriment which may be involved in a cessation of practice is insufficient to stay this action.

We are not persuaded that respondent has demonstrated either sufficient irreparable injury or the likelihood of success on the merits to warrant the granting of a stay herein. Indeed, where this Board finds a basis for disciplinary sanction, it believes it to be both in its interest as well as the public interest that such sanctions take effect expeditiously.

Accordingly, it is on this 17th day of January, 1986,

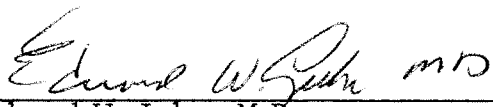
ORDERED:

1. Respondent's application for a stay of the Board's Final Order and Decision shall be and hereby is denied. The Order of the Board is accordingly effective October 29, 1985 and the period of active suspension thus began on January 1, 1986.

2. This Order is made effective January 8, 1986 and shall be entered non pro tunc.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____


Edward W. Luka, M.D.
President